

107TH CONGRESS
2D SESSION

S. 3098

To amend title XVIII of the Social Security Act to establish a program for the competitive acquisition of items and services under the medicare program.

IN THE SENATE OF THE UNITED STATES

OCTOBER 10, 2002

Mr. GRAHAM (for himself and Mr. GRAMM) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to establish a program for the competitive acquisition of items and services under the medicare program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medicare Competitive
5 Acquisition Act of 2002”.

6 **SEC. 2. COMPETITIVE ACQUISITION OF ITEMS AND SERV-**
7 **ICES UNDER MEDICARE.**

8 (a) PROGRAM AUTHORIZED.—Title XVIII of the So-
9 cial Security Act (42 U.S.C. 1395 et seq.) is amended by

1 redesignating section 1866B as section 1866C and by in-
 2 serting after section 1866A the following new section:

3 “COMPETITIVE ITEM AND SERVICE ACQUISITION
 4 PROGRAM

5 “SEC. 1866B. (a) PROGRAM AUTHORITY.—

6 “(1) IN GENERAL.—The Secretary shall imple-
 7 ment programs and demonstration projects to pur-
 8 chase, on behalf of individuals enrolled under part
 9 B, certain competitively priced items and services in
 10 competitive acquisition areas (in accordance with the
 11 succeeding provisions of this section) for which pay-
 12 ment is made under such part. Such areas may dif-
 13 fer in the items and services provided.

14 “(2) RULES APPLICABLE TO PROGRAMS AND
 15 DEMONSTRATION PROJECTS.—With respect to each
 16 program and demonstration project implemented
 17 under this section, the following rules shall apply:

18 “(A) The Secretary may reject unreason-
 19 ably low bids.

20 “(B) If the Secretary determines that the
 21 product quality or service quality of an entity
 22 with a contract has deteriorated since the con-
 23 tract was entered into, the Secretary may can-
 24 cel the contract prior to the date on which the
 25 contract is scheduled to end and award a con-

1 tract to a different entity for the remainder of
2 the term of the contract.

3 “(C) No device that is in a class of devices
4 described in section 513(a)(1)(C) of the Federal
5 Food Drug and Cosmetic Act (21 U.S.C.
6 360c(a)(1)(C)) may be furnished under such a
7 program or demonstration project.

8 “(3) PHASED-IN IMPLEMENTATION.—The pro-
9 grams implemented under paragraph (1) shall be
10 phased-in among competitive acquisition areas over
11 a period of not longer than 5 years in a manner so
12 that the competition under the programs occurs in—

13 “(A) at least $\frac{1}{5}$ of such areas in 2003;

14 “(B) at least $\frac{2}{5}$ of such areas in 2004;

15 “(C) at least $\frac{3}{5}$ of such areas in 2005; and

16 “(D) at least $\frac{4}{5}$ of such areas in 2006.

17 “(b) IMPLEMENTATION OF PROGRAMS IN COMPETI-
18 TIVE ACQUISITION AREAS.—

19 “(1) TYPES OF PROGRAMS.—The Secretary
20 shall implement programs under which competitive
21 acquisition areas are established for contract award
22 purposes for the furnishing under part B of—

23 “(A) covered items (as defined in section
24 1834(a)(13)) and inhalation drugs used in con-
25 junction with durable medical equipment;

1 “(B) surgical dressings, splints, casts, and
2 other devices described in section 1861(s)(5);
3 and

4 “(C) leg, arm, back, and neck braces de-
5 scribed in section 1861(s)(9), other than cus-
6 tom fabricated orthotics (as defined by the Sec-
7 retary).

8 “(2) PROGRAM REQUIREMENTS.—Each pro-
9 gram implemented under paragraph (1) shall—

10 “(A) include such categories of items and
11 services as the Secretary may prescribe; and

12 “(B) be conducted in such competitive ac-
13 quisition areas as the Secretary determines are
14 appropriate.

15 “(3) CRITERIA FOR ESTABLISHMENT OF COM-
16 PETITIVE ACQUISITION AREAS.—Each competitive
17 acquisition area established under a program imple-
18 mented under paragraph (1) shall—

19 “(A) be, or shall be within, a metropolitan
20 statistical area (as defined by the Director of
21 the Office of Management and Budget and the
22 Secretary of Commerce);

23 “(B) be chosen based on the availability
24 and accessibility of entities able to furnish
25 items and services, and the probable savings to

1 be realized by the use of competitive bidding in
 2 the furnishing of items and services in such
 3 area; and

4 “(C) have multiple suppliers for each prod-
 5 uct category.

6 “(c) AWARDING OF CONTRACTS IN COMPETITIVE AC-
 7 quisition AREAS.—

8 “(1) IN GENERAL.—The Secretary shall con-
 9 duct a competition among entities supplying the
 10 items and services to be furnished under the pro-
 11 gram implemented under subsection (b)(1) for each
 12 competitive acquisition area established under sub-
 13 section (b)(3) for that program.

14 “(2) ADMINISTRATION BY CONTRACT.—

15 “(A) IN GENERAL.—The Secretary shall
 16 administer the programs under this section by
 17 entering into contracts with entities.

18 “(B) CONDITIONS FOR AWARDING CON-
 19 TRACT.—The Secretary may not award a con-
 20 tract to any entity under the competition con-
 21 ducted under paragraph (1) to furnish an item
 22 or service unless the Secretary finds that—

23 “(i) the entity meets quality and fi-
 24 nancial standards specified by the Sec-
 25 retary or developed by accreditation enti-

1 ties or organizations recognized by the Sec-
2 retary;

3 “(ii) beneficiary liability is limited to
4 the applicable percentage of the contract
5 award price;

6 “(iii) the entity has an agreement in
7 effect under section 1866 and has an ac-
8 tive National Supplier Clearinghouse iden-
9 tification number;

10 “(iv) the entity complies with all Fed-
11 eral and State licensure and regulatory re-
12 quirements;

13 “(v) the entity is in compliance with
14 all the provisions of title XI, this title, and
15 title XIX, and any regulations relating
16 thereto;

17 “(vi) the entity is in compliance with
18 all billing guidelines relating to the pro-
19 gram under this title;

20 “(vii) the entity has not been sus-
21 pended within the 12 months preceding the
22 date on which a bid is submitted by any
23 DMERC antifraud unit for billing for
24 items or services not furnished; and

1 “(viii) the total amounts to be paid
2 under the contract (including costs associ-
3 ated with the administration of the con-
4 tract) are expected to be less than the total
5 amounts that would otherwise be paid.

6 “(3) CONTENTS OF CONTRACT.—A contract en-
7 tered into with an entity under the competition con-
8 ducted under paragraph (1) shall be subject to such
9 terms and conditions as the Secretary may specify.

10 “(4) LIMIT ON NUMBER OF CONTRACTORS.—
11 The Secretary may limit the number of contractors
12 in a competitive acquisition area to the number
13 needed to meet projected demand for items and serv-
14 ices covered under the contracts.

15 “(5) SMALL BUSINESS PROTECTIONS.—Not-
16 withstanding any other provision of this section, the
17 Secretary shall allow—

18 “(A) an entity to bid to become a supplier
19 in a portion of the competitive acquisition area
20 if the entity does not have the capacity to serv-
21 ice an entire competitive acquisition area;

22 “(B) small suppliers to bid for only 1 or a
23 few product categories instead of all the prod-
24 ucts in a competitive acquisition area; and

1 “(C) small suppliers to join together to
2 form networks for bidding purposes, as long as
3 the combined market share of such suppliers
4 does not exceed 25 percent.

5 “(d) EVALUATIONS AND ANNUAL REPORTS.—

6 “(1) EVALUATIONS.—The Secretary shall evalu-
7 ate the impact of the implementation of the pro-
8 grams implemented under subsection (b)(1) on—

9 “(A) payments made and savings realized
10 under this title;

11 “(B) the access of beneficiaries to items
12 and services furnished under such programs
13 and demonstration projects;

14 “(C) the diversity of product selection
15 under such programs and demonstration
16 projects; and

17 “(D) the quality of items and services fur-
18 nished under such programs and demonstration
19 projects.

20 “(2) ANNUAL REPORTS.—Not less frequently
21 than annually, the Secretary shall submit to the
22 Committees on Ways and Means and Energy and
23 Commerce of the House of Representatives and the
24 Committee on Finance of the Senate a report on the

1 results of the evaluation conducted under paragraph
2 (1).

3 “(e) DIAGNOSTIC TESTS.—

4 “(1) IN GENERAL.—The Secretary shall imple-
5 ment demonstration projects under which competi-
6 tive acquisition areas are established for contract
7 award purposes for the furnishing under part B of
8 diagnostic x-ray tests, diagnostic laboratory tests,
9 and other diagnostic tests described in section
10 1861(s)(3).

11 “(2) PROJECT REQUIREMENTS.—Each dem-
12 onstration project under paragraph (1) shall—

13 “(A) be conducted in not more than 3
14 competitive acquisition areas;

15 “(B) be operated over a 3-year period; and

16 “(C) otherwise be subject to the conditions
17 under subsections (b)(3) and (c) in the same
18 manner as such conditions apply to the pro-
19 grams established under subsection (a).

20 “(3) REPORTS.—

21 “(A) INITIAL REPORT.—Not later than
22 December 31, 2004, the Secretary shall submit
23 to the Committees on Ways and Means and En-
24 ergy and Commerce of the House of Represent-
25 atives and the Committee on Finance of the

1 Senate an initial report on the demonstration
2 projects conducted under this subsection.

3 “(B) PROGRESS AND FINAL REPORTS.—

4 The Secretary shall submit such progress and
5 final reports to the committees described in
6 subparagraph (A) after the date described in
7 such subparagraph as the Secretary determines
8 appropriate.

9 “(f) OTHER PART B ITEMS AND SERVICES.—

10 “(1) IN GENERAL.—The Secretary may imple-
11 ment not more than 5 demonstration projects under
12 which competitive acquisition areas are established
13 for contract award purposes for the furnishing under
14 part B of any item or service covered under such
15 part that the Secretary may specify other than—

16 “(A) any item or service described in sub-
17 section (e)(1); or

18 “(B) physicians’ services (as defined in
19 section 1861(r)(1)).

20 “(2) PROJECT REQUIREMENTS.—Each dem-
21 onstration project under paragraph (1) shall—

22 “(A) be conducted in not more than 3
23 competitive acquisition areas;

24 “(B) be operated over a 3-year period; and

1 “(C) otherwise be subject to the conditions
2 under subsections (b)(3) and (c) in the same
3 manner as such conditions apply to the pro-
4 grams established under subsection (a).

5 “(3) REPORTS.—

6 “(A) INITIAL REPORT.—Not later than
7 December 31, 2004, the Secretary shall submit
8 to the Committees on Ways and Means and En-
9 ergy and Commerce of the House of Represent-
10 atives and the Committee on Finance of the
11 Senate an initial report on the demonstration
12 projects conducted under this subsection.

13 “(B) PROGRESS AND FINAL REPORTS.—
14 The Secretary shall submit such progress and
15 final reports to the committees described in
16 subparagraph (A) after the date described in
17 such subparagraph as the Secretary determines
18 appropriate.

19 “(g) EXPANSION OF PROGRAMS AND DEMONSTRA-
20 TION PROJECTS.—The Secretary may expand a program
21 or demonstration project implemented under subsection
22 (b)(1) to additional competitive acquisition areas if the
23 Secretary determines, based on the evaluations conducted
24 under subsection (d)(1), that there is clear evidence that
25 any program or demonstration project—

1 “(1) results in a decrease in Federal expendi-
 2 tures under this title; and

3 “(2) does not reduce program access, diversity
 4 of product selection, and quality under this title.

5 “(h) DURATION OF PROGRAMS AND DEMONSTRA-
 6 TION PROJECTS.—

7 “(1) DURABLE MEDICAL EQUIPMENT, SURGICAL
 8 DRESSINGS, AND ORTHOTICS.—The programs imple-
 9 mented under subsection (b)(1) shall terminate on
 10 such date as the Secretary may specify or may con-
 11 tinue indefinitely (as determined by the Secretary).

12 “(2) DIAGNOSTIC TESTS.—

13 “(A) IN GENERAL.—Except as provided in
 14 subparagraph (B), any demonstration project
 15 implemented under subsection (e)(1) shall ter-
 16minate not later than December 31, 2007.

17 “(B) EXCEPTION.—If the Secretary deter-
 18 mines that a demonstration project imple-
 19 mented under subsection (e)(1) meets the re-
 20 quirements of paragraphs (1) and (2) of sub-
 21 section (g), such project shall terminate on such
 22 date as the Secretary may specify or may con-
 23 tinue indefinitely (as determined by the Sec-
 24 retary).

1 “(3) OTHER PART B ITEMS AND SERVICES.—

2 Any demonstration project implemented under sub-
3 section (f)(1) shall terminate not later than Decem-
4 ber 31, 2007.”.

5 (b) CONTINUATION OF ORIGINAL DEMONSTRATION
6 PROJECTS.—Section 1847(e) of the Social Security Act
7 (42 U.S.C. 1395w–3(e)) is amended by striking “all
8 projects under this section shall terminate not later than
9 December 31, 2002” and inserting “all projects imple-
10 mented under this section prior to December 31, 2002,
11 shall continue under the same terms and conditions appli-
12 cable under this section until such time as the competitive
13 acquisition area under a demonstration project imple-
14 mented under subsection (a) is designated as a competitive
15 acquisition area for purposes of section 1866B”.

16 (c) ITEMS AND SERVICES TO BE FURNISHED ONLY
17 THROUGH COMPETITIVE ACQUISITION.—Section 1862(a)
18 of the Social Security Act (42 U.S.C. 1395y(a)), as
19 amended by section 3(a) of the Administrative Simplifica-
20 tion Compliance Act (Public Law 107–105; 115 Stat.
21 1006), is amended—

22 (1) by striking “or” at the end of paragraph
23 (21);

24 (2) by striking the period at the end of para-
25 graph (22) and inserting “; or”; and

1 (3) by inserting after paragraph (22) the fol-
 2 lowing new paragraph:

3 “(23) except in such cases of emergency or ur-
 4 gent need as the Secretary shall prescribe, where the
 5 expenses are for an item or service described in sec-
 6 tion 1866B(d) that is furnished in a competitive ac-
 7 quisition area (as established by the Secretary under
 8 section 1866B(b)) by an entity other than an entity
 9 with which the Secretary has entered into an agree-
 10 ment under section 1866B(c) for the furnishing of
 11 such an item or service in that area.”.

12 (d) CONFORMING AMENDMENTS RELATING TO GEN-
 13 ERAL PROVISIONS FOR ADMINISTRATION.—

14 (1) GENERAL ADMINISTRATIVE AUTHORITY.—
 15 Section 1866C(a) of the Social Security Act (as re-
 16 designated by subsection (a)) is amended—

17 (A) in paragraph (1)—

18 (i) in the matter preceding subpara-
 19 graph (A), by striking “the program under
 20 section 1866A (in this section referred to
 21 as the ‘demonstration program’)” and in-
 22 serting “a program or demonstration
 23 project under section 1866A or 1866B”;

1 (ii) in subparagraph (A), by striking
 2 “and entitled to benefits under part A;
 3 and” and inserting a semicolon;

4 (iii) in subparagraph (B), by striking
 5 the period at the end and inserting “;
 6 and”; and

7 (iv) by adding at the end the following
 8 new subparagraph:

9 “(C) in the case of the demonstration pro-
 10 gram under section 1866A, is entitled to bene-
 11 fits under part A.”;

12 (B) in paragraph (3), by striking “Items
 13 and services shall” and inserting “Except as
 14 provided in the authority for the programs and
 15 demonstration projects under section 1866B,
 16 items and services shall”;

17 (C) in paragraph (4), by striking “individ-
 18 uals or entities” and inserting “entities (or, in
 19 the case of the demonstration program under
 20 section 1866A, individuals or entities)”;

21 (D) in paragraph (5)—

22 (i) in the first sentence, by striking
 23 “the demonstration program” and insert-
 24 ing “the programs and demonstration

1 projects under sections 1866A and
2 1866B”; and

3 (ii) in the second sentence, by striking
4 “individuals or entities” and inserting “en-
5 tities (or, in the case of the demonstration
6 program under section 1866A, individuals
7 or entities)”;

8 (E) in paragraph (6)—

9 (i) by striking “individual or entity”
10 and inserting “entity (or, in the case of the
11 demonstration program under section
12 1866A, an individual or entity)”;

13 (ii) by striking “the demonstration
14 program” and inserting “the programs and
15 demonstration projects under sections
16 1866A and 1866B”;

17 (F) in paragraph (7), by striking “indi-
18 vidual or entity” each place it appears and in-
19 serting “entity (or, in the case of the dem-
20 onstration program under section 1866A, an in-
21 dividual or entity)”;

22 (G) in paragraph (8)—

23 (i) in subparagraph (A), by striking
24 “the demonstration program” and insert-
25 ing “the programs and demonstration

1 projects under sections 1866A and
 2 1866B”; and

3 (ii) in subparagraph (B), by striking
 4 “individual or entity” and inserting “entity
 5 (or, in the case of the demonstration pro-
 6 gram under section 1866A, an individual
 7 or entity)”.

8 (2) CONTRACTS FOR PROGRAM ADMINISTRA-
 9 TION.—Section 1866C(b) of the Social Security Act
 10 (as so redesignated) is amended—

11 (A) in paragraph (1), by striking “the
 12 demonstration program” and inserting “the
 13 programs and demonstration projects under
 14 sections 1866A and 1866B”;

15 (B) in paragraph (2), by striking “CON-
 16 TRACTS.—The Secretary” and inserting the fol-
 17 lowing: “CONTRACTS.—A contract under this
 18 subsection may, at the Secretary’s discretion,
 19 relate to the administration of either the pro-
 20 gram under section 1866A or a program or
 21 demonstration project under section 1866B, or
 22 both. The Secretary”; and

23 (C) in paragraph (7)—

1 (i) in subparagraph (D), by inserting
 2 “under section 1866A” before the period
 3 at the end;

4 (ii) by redesignating subparagraphs
 5 (E) through (H) as subparagraphs (G)
 6 through (J), respectively; and

7 (iii) by inserting after subparagraph
 8 (D) the following new subparagraphs:

9 “(E) LIST OF PROGRAM PARTICIPANTS.—
 10 Maintain and regularly update a list of entities
 11 with agreements to provide health care items
 12 and services under the program under section
 13 1866B, and ensure that such list, in electronic
 14 and hard copy formats, is readily available, as
 15 applicable, to—

16 “(i) individuals residing in the service
 17 area who are entitled to benefits under
 18 part A or enrolled in the program under
 19 part B;

20 “(ii) the entities responsible under
 21 sections 1816 and 1842 for administering
 22 payments for health care items and serv-
 23 ices furnished; and

24 “(iii) entities providing health care
 25 items and services in the service area.

1 “(F) BENEFICIARY ENROLLMENT.—Deter-
 2 mine eligibility of individuals to enroll under a
 3 program or demonstration project under section
 4 1866B and provide enrollment-related services
 5 (but only if the Secretary finds that the pro-
 6 gram administrator has no conflict of interest
 7 caused by a financial relationship with any enti-
 8 ty furnishing items or services for which pay-
 9 ment may be made under any such program, or
 10 any other conflict of interest with respect to
 11 such function).”.

12 (3) RULES APPLICABLE TO BOTH PROGRAM
 13 AGREEMENTS AND PROGRAM ADMINISTRATION CON-
 14 TRACTS.—Section 1866C(e) of the Social Security
 15 Act (as so redesignated) is amended—

16 (A) in paragraph (1), by striking “the
 17 demonstration program” and inserting “the
 18 programs and demonstration projects under
 19 sections 1866A and 1866B”;

20 (B) in paragraph (2)—

21 (i) in the matter preceding subpara-
 22 graph (A), by inserting “under section
 23 1866A” after “the demonstration pro-
 24 gram”;

1 (ii) in subparagraph (A), by striking
 2 “the program” and inserting “such a pro-
 3 gram”; and

4 (iii) in subparagraph (B)(i), by insert-
 5 ing “under section 1866A” after “the dem-
 6 onstration program”; and

7 (C) in paragraph (3)—

8 (i) by striking “the demonstration
 9 program” and inserting “the programs and
 10 demonstration projects under sections
 11 1866A and 1866B”; and

12 (ii) by striking “administer the pro-
 13 gram” and inserting “administer such a
 14 program or project”.

15 (4) LIMITATIONS ON JUDICIAL REVIEW.—Sec-
 16 tion 1866C(d) of the Social Security Act (as so re-
 17 designated) is amended—

18 (A) in the matter preceding paragraph (1),
 19 by striking “the demonstration program” and
 20 inserting “the programs and demonstration
 21 projects under sections 1866A and 1866B” in
 22 the matter preceding subparagraph (A);

23 (B) in paragraph (1), by striking “the pro-
 24 gram” and inserting “a program or demonstra-
 25 tion project under section 1866A or 1866B”;

(C) in paragraph (2), by striking “program” each place it appears and inserting “program or demonstration project”; and

(D) in paragraph (5)—

(i) in the matter preceding subparagraph (A), by striking “to the program” and inserting “to a program or demonstration project”;

(ii) in subparagraph (A), by striking “or” after the semicolon at the end; and

(iii) in subparagraph (B), by inserting “with respect to the demonstration program under section 1866A,” before “as to whether”.

(5) APPLICATION LIMITED TO PARTS A AND B.—Section 1866C(e) of the Social Security Act (as so redesignated) is amended by striking “or of the demonstration program” and inserting “, section 1866A, or section 1866B”.

(6) OTHER CONFORMING AMENDMENTS.—

(A) Section 1866A(a)(2) of the Social Security Act (42 U.S.C. 1395cc–1) is amended by striking “section 1866B” and inserting “section 1866C”.

1 (B) The heading of section 1866C of the
2 Social Security Act (as so redesignated) is
3 amended to read as follows:

4 “GENERAL PROVISIONS FOR THE ADMINISTRATION OF
5 CERTAIN PRIVATE SECTOR PURCHASING AND QUAL-
6 ITY IMPROVEMENT PROGRAMS”.

7 (e) GAO STUDY AND REPORT.—

8 (1) STUDY.—The Comptroller General of the
9 United States shall conduct a study on the coverage
10 under the medicare program under title XVIII of the
11 Social Security Act of new and innovative durable
12 medical equipment, prosthetics, orthotics, supplies,
13 and equipment and the coding of such items for pur-
14 poses of payment under such program. Such study
15 shall include an analysis of the review and approval
16 process for the new and innovative items described
17 in the preceding sentence, the coding process for
18 such items, and beneficiary access to such items if
19 such items are not covered under the medicare pro-
20 gram.

21 (2) REPORT.—Not later than the date that is
22 2 years after the date of enactment of this Act, the
23 Comptroller General shall submit a report on the
24 study conducted under paragraph (1) to the Com-
25 mittee on Ways and Means and the Committee on
26 Energy and Commerce of the House of Representa-

1 tives and the Committee on Finance of the Senate
2 together with such recommendations for legislative
3 and administrative action as the Comptroller Gen-
4 eral determines appropriate.

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